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GSAMP TRUST 2004-OPT, MORTGAGE PASS-THROUGH
7 CERTIFICATES, SERIES 2004-OPT

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

10
11 In re

12 GERARDO GARCIA AND GEORGETTE
13 ROSELLA GARCIA ,
14 Debtor(s).

Case No. 10-46071-RLE

Chapter 13

R.S. No. ELL - 215

MOTION FOR RELIEF FROM
AUTOMATIC STAY
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

DATE: September 14, 2011
TIME: 1:30 PM
CTRM: 201

1300 Clay Street, Suite 300
Oakland, CA 94604-1426

19 TO THE RESPONDENTS NAMED ABOVE:

20 DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR GSAMP
21 TRUST 2004-OPT, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-OPT¹
22 ("Movant"), respectfully represents as follows:

23 /././

24 /././

25 /././

26 /././

27 _____

28 ¹ This Motion for Relief from Automatic Stay shall not constitute a waiver of the within party's right to receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004, notwithstanding Pite Duncan, LLP's participation in this proceeding. Moreover, the within party does not authorize Pite Duncan, LLP, either expressly or impliedly through Pite Duncan, LLP's participation in this proceeding, to act as its agent for purposes of service under Fed. R. Bankr. P. 7004.

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attorneys' fees and costs in bringing the instant Motion. This is an approximate amount for purposes of this Motion only, and should not be relied upon as such to pay off the subject loan as interest and additional advances may come due subsequent to the filing of the Motion. An exact payoff amount can be obtained by contacting Movant's counsel.

7. Pursuant to 11 United States Code § 1322, and the Debtors' Chapter 13 Plan, the Debtors are obligated to make all post-petition payments owing on the Note directly to Movant. However, Movant has not received the post-petition payments owing for April 1, 2011 through July 1, 2011. Accordingly, the post-petition arrears owing under the Note are in the approximate sum of \$4,544.61, consisting of four (4) payments in the amount of \$1,229.70 each; and less \$374.19 held in suspense, excluding the post-petition attorneys' fees and costs incurred in filing the instant Motion. A copy of the post-petition payment accounting pursuant to Local Rule 4001-1(g)(1) is attached to the Declaration in Support of Motion for Relief From Automatic Stay as exhibit D.

8. A debtor's failure to make post-petition mortgage payments as they become due in a Chapter 13 case constitutes "cause" for relief from the automatic stay pursuant to 11 United States Code § 362(d)(1). In re Ellis, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). Accordingly, as the Debtors have failed to make post-petition payments under the Note, Movant is entitled to relief from the automatic stay pursuant to 11 United States Code § 362(d)(1).

RELIEF FROM STAY

LACK OF EQUITY

9. Movant is informed and believes that, based on the Debtors' bankruptcy Schedules, the fair market value of the Real Property is no more than \$150,000.00. Copies of Debtors' bankruptcy Schedules A and D are collectively attached hereto as exhibit E.

10. Based on the above, under the best case scenario, Movant is informed and believes that the equity in the Real Property is as follows:

Fair Market Value:	\$150,000.00
Less:	
Movant's Trust Deed	\$208,648.47
American Home Mortgage Servicing's 2nd Trust Deed	\$64,803.00
County of Sacramento's Property Taxes	\$1,250.00
Costs of Sale (8%)	<u>\$12,000.00</u>

1 Equity in the Property:

\$<136,701.47>

2
3 As a result, there is no equity in the Real Property to be realized by the Debtors or the
4 bankruptcy estate. Further, as the Debtors are unable to service the debt on the Real Property,
5 Movant contends that the Real Property is not necessary for an effective reorganization.
6 Therefore, Movant is entitled to relief from stay under 11 United States Code § 362(d)(2).

7 11. If Movant is not allowed to regain possession of and to foreclose on the Real
8 Property it will suffer irreparable injury, loss and damage.

9 **RELIEF FROM STAY - CAUSE**

10 **ADEQUATE PROTECTION**

11 12. Pursuant to the provisions of 11 United States Code §§ 361 and 362(d), Movant is
12 entitled to adequate protection of its interest in the Real Property.

13 13. Movant submits the adequate protection in this case requires normal and periodic
14 cash payments, as called for by the Note, plus the repayment of any and all delinquent amounts
15 owed to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

16 14. Movant is informed and believes that Debtors are presently unwilling or unable to
17 provide adequate protection to the Movant and there is no probability that adequate protection
18 can be afforded to Movant within a reasonable time.

19 15. By reason of the foregoing, Movant is entitled to relief from stay under 11 United
20 States Code § 362(d)(1), based upon the failure of Debtors to provide adequate protection to
21 Movant and to make payments as required by 11 United States Code § 1322.

22 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

23 1) Terminating the automatic stay of 11 United States Code § 362, as it applies to the
24 enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of
25 Trust;

26 2) That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

27 3) Granting Movant leave to foreclose on the Real Property and to enforce the
28 security interest under the Note and the Deed of Trust, including any action necessary to obtain
possession of the Property;

1 4) The Order Terminating Stay of 11 U.S.C. § 362 shall be binding and effective and
2 supersede any subsequently entered confirmation order that confirms a Chapter 13 Plan of
3 Reorganization providing for the treatment of Movant's claim.

4 5) Permitting Movant to offer and provide Debtors with information re: a potential
5 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
6 Mitigation Agreement, and to enter into such agreement with Debtors;

7 6) Alternatively, in the event this court declines to grant Movant the relief requested
8 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to
9 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust
10 and all other deeds of trust encumbering the Real Property, including Debtors' obligations to pay
11 when due (a) the monthly installments of principal and interest, as required under the Note;
12 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors in
13 order to protect Movant's interest in the Real Property, including all attorneys' fees and costs
14 incurred in the filing of this motion;

15
16 7) That the attorneys' fees and costs incurred by Movant for filing the instant Motion
17 be included in the outstanding balance of the Note as allowed under applicable non-bankruptcy
18 law; and

19 8) For such other and further relief as the court deems just and proper.

20 Dated: August 30, 2011

PITE DUNCAN, LLP

21
22 /s/ ERIN L. LANEY (CA SBN 259863)
23 Attorneys for DEUTSCHE BANK NATIONAL
24 TRUST COMPANY, AS TRUSTEE FOR GSAMP
25 TRUST 2004-OPT, MORTGAGE PASS-
26 THROUGH CERTIFICATES, SERIES 2004-OPT
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